

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-009723

02/11/2010

HONORABLE JOHN A. BUTTRICK

CLERK OF THE COURT  
C. Castro  
Deputy

PAULINE GILSON, et al.

GARY L HUDSON JR.

v.

JOHN KEMMERIES, et al.

SCOTT W HULBERT

JONATHAN A DESSAULES  
STEPHEN M DICHTER  
JAMES H MARBURGER  
JOHN C MARCOLINI  
IVAN K MATHEW

RULING

On January 29, 2010, the Court took under advisement the Motion to Dismiss for Lack of Personal Jurisdiction, filed by Defendants James and Maria Irwin (the "Irwins") and dated November 5, 2009.

At the January 29, 2010 oral argument, the parties agreed to submit without oral argument, Defendants Hunter and Brauer's Motion to Dismiss Fourth Amended Complaint, filed October 1, 2009.<sup>1</sup> The Court has considered all the briefs submitted in connection with that motion.

---

<sup>1</sup> This Motion was joined by the Irwins on November 6, 2009.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-009723

02/11/2010

Hunter, Brauer and the Irwins (collectively “Brauer”) assert that the claims made against them in the Fourth Amended Complaint (“FAC”) are barred by the applicable two-year statute of limitations, Ariz. Rev. Stat. §12-542 (2), addressing wrongful death claims. In this case, Robert Gilson died on November 1, 2006. The FAC was filed and served on August 16, 2009. A Second Amended Complaint (“SAC”) was filed on October 30, 2008, but never served.<sup>2</sup>

This matter is subject to dismissal regardless of which Complaint is analyzed. The SAC is subject to dismissal because it was never served before February 27, 2009. The FAC is subject to dismissal because it was filed long after November 1, 2008, the two-year anniversary of Gilson’s death, and is thus barred by the statute of limitations.<sup>3</sup>

Therefore,

**The Motions to Dismiss of Defendants Hunter, Brauer and the Irwins are granted.<sup>4</sup>**

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>

---

<sup>2</sup> Indeed, Plaintiffs never even sought leave to extend the 120 service period for the SAC pursuant to Ariz. R. Civ. P. 4 (i). Thus the time to serve the SAC expired on February 27, 2009.

<sup>3</sup> As Plaintiffs themselves acknowledge, the relation back doctrine of Ariz. R. Civ. P. 15 (c) is not applicable here because it applies only to “an amendment changing the party against whom a claim is asserted....” The Fourth Amended Complaint is not such an amended pleading.” Plaintiffs’ Opposition at 5. See *Pargman v. Vicker*, 208 Ariz. 573, 578 (App. 2004) (discussing Rule 15 (c) and noting its application “[i]n the context of adding or changing a party”).

<sup>4</sup> The Court need not and does not reach the merits of the alternative bases for dismissal raised by Brauer. Additionally, this ruling moots the Irwins’ Motion to Dismiss for Lack of Personal Jurisdiction argued on January 29, 2010.